

MARTIN A. MUCKLEROY, ESQ.
Nevada Bar No. 009634
MUCKLEROY LUNT, LLC
6077 S. Fort Apache, Ste 140F
Las Vegas, NV 89148
Phone: (702) 907-0097
Direct: (702) 534-6272
Fax: (702) 938-4065
martin@muckleroylunt.com

Attorney for Plaintiff Theodurus Strous

(Additional Counsel on Signature Page)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THEODURUS STROUS,
DERIVATIVELY ON BEHALF OF SCIO
DIAMOND TECHNOLOGY CORP.,

Plaintiff,

v.

BERNARD MCPHEELY, KARL
LEAVERTON, GERALD MCGUIRE,
LEWIS SMOAK, ADAMAS ONE CORP.
and JOHN G. GRDINA,

Defendants,

and

SCIO DIAMOND TECHNOLOGY
CORP.,

Nominal Defendant.

Case No. 22-cv-00256-JCM-EJY

**STIPULATION TO PARTIALLY
EXTEND BRIEFING SCHEDULE RE
DEFENDANTS' MOTIONS TO
DISMISS PLAINTIFF'S SECOND
AMENDED DERIVATIVE ACTION
AND CLASS ACTION COMPLAINT
(Second Request)**

Plaintiff Theodurus Strous ("Plaintiff") and Defendants Bernard McPheely, Karl Leaverton, Gerald McGuire, Lewis Smoak (collectively, the "Scio Defendants"), Adamas One Corp., and John Grdina (collectively, along with Gerald McGuire, the "Adamas Defendants", and along with the Scio Defendants, the "Defendants")), by and through their

**STIPULATION TO PARTIALLY EXTEND BRIEFING SCHEDULE RE DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFF'S SECOND AMENDED DERIVATIVE ACTION AND
CLASS ACTION COMPLAINT**

undersigned counsel, stipulate to extend the remaining briefing schedule on the Defendants' motions to dismiss the Plaintiff's Second Amended Derivative Action and Class Action Complaint (the "SAC"). This is the second request to extend the briefing schedule on the Defendants' Motions to Dismiss and seeks a partial extension. Following are the events to date:

On February 10, 2022, Plaintiff filed the Complaint against Defendants Bernard McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak.

On September 30, 2022, Plaintiff Theodurus Strous filed the Amended Complaint against Defendants Bernard McPheely, Karl Leaverton, Gerald McGuire, and Lewis Smoak, and added two additional Defendants: Adamas One Corporation and John G. Grdina.

On November 15, 2022, the Court granted Defendants' Stipulation to Extend Defendants' time to Respond to Plaintiff's Amended Complaint.

The briefing schedule per the Court's Order has been partially satisfied as follows:

On January 20, 2023, Plaintiff filed the SAC.

On February 17, 2023, the Scio Defendants and Adamas Defendants filed separate motions to dismiss the SAC with the Adamas Defendants also joining in the motion to dismiss of the Scio Defendants.

Presently pending is Plaintiff's opposition brief to Defendants' Motions to Dismiss that is due to be filed on April 6, 2023, and Defendants' reply briefs that are due on May 11, 2023.

The parties propose the following amended schedule:

a. On May 15, 2023, Plaintiff shall file an opposition to Defendants' motions to dismiss and/or inform the Court of how it wishes to proceed based on the facts set forth below; and

b. On June 21, 2023, Defendants shall file their reply briefs to Plaintiff's opposition to the motions to dismiss and/or file a response to Plaintiff's proposed course of how to proceed.

Good cause exists for the proposed extension, as set forth below:

1 1. Plaintiff's SAC alleges a derivative claim under Federal Rule of Civil
2 Procedure 23.1 against all Defendants and alleges demand is futile as to Scio's Board of
3 Directors. In determining the demand futility issue, the pertinent inquiry is directed at the
4 Board of Directors who were Scio board members at the time of the filing of the original
5 action on February 22, 2022.

6 2. It has very recently come to the attention of the parties that the SCIO
7 Defendants resigned as Scio Board members in March 2020 and that no new Board was
8 appointed or in place on February 22, 2023, or thereafter, as Scio's Nevada corporate charter
9 was revoked.

10 3. As a result, there is an issue of how to proceed (and whether Plaintiff has
11 standing to proceed) under these circumstances where there appears to be no Board in place
12 at a company whose charter has been revoked at the time the original action was filed. Thus,
13 no demand could have been made, nor can the demand futility issue be properly addressed.

14 4. The parties seek an opportunity to determine the effect of the combination of
15 a corporation whose charter was revoked and entire Board resigning prior to suit being
16 brought and no new Board appointed because of the demand/demand futility issue and
17 accordingly, how to proceed.

18 5. The Parties believe that this extension, if granted, will not unreasonably delay
19 this case and that the extension will serve to preserve the Court's and the parties' resources
20 and advance judicial economy under the circumstances present in this litigation.

21 6. Neither Plaintiff nor Defendants will be prejudiced by the stipulation.

22 Therefore, the parties propose the following amended briefing schedule for
23 Defendants' Motions to Dismiss:

24 1. Defendants moved to dismiss the Second Amended
25 Complaint on **Friday, February 17, 2023**.

26 2. On or before **Monday, May 15, 2023**, Plaintiff shall file an
27 opposition to Defendants' motions to dismiss and/or inform
28 the Court of how it wishes to proceed based on the facts set

forth above concerning the requirements of Federal Rule of Procedure 23.1; and

3. On or before **Wednesday, June 21, 2023**, Defendants shall file their reply briefs to Plaintiff's oppositions to the motions to dismiss and/or file a response to Plaintiff's proposed course of how to proceed based on the facts set forth above concerning the requirements of Federal Rule of Civil Procedure 23.1.
4. All rights are reserved with regards to any further requests for extensions of deadlines. This schedule can be modified by further written agreement of the parties or order of the court.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated this 5th day of April, 2023.

SPENCER FANE LLP

Mary E. Bacon (NV Bar No. 12686)
300 S. Fourth Street, Suite 950
Las Vegas, NV 89101

and

BEST & FLANAGAN LLP

/s/ John A. Sullivan
Amy S. Conners
John A. Sullivan
Brian Linnerooth
60 South Sixth Street, Suite 2700
Minneapolis, Minnesota 55402
Telephone: (612) 339-7121
Facsimile: (612) 339-5897

*Attorneys for Defendants Bernard
McPheely, Karl Leaverton, Gerald
McGuire and Lewis Smoak*

MUCKLEROY LUNT, LLC

/s/ Martin A. Muckleroy
Martin A. Muckleroy (NV Bar No. 9634)
6077 S. Fort Apache Rd., Ste. 140
Las Vegas, NV 89148
Telephone: 702-907-0097
Facsimile: 702-938-4065

and

EVANGELISTA WORLEY, LLC

James Evangelista
Stuart J. Guber
500 Sugar Mill Rd., Bldg. A, Ste. 245
Atlanta, GA 30350
Telephone: 404-205-8400
Facsimile: 404-205-8395

Attorneys for Plaintiff

CLARK HILL PLLC

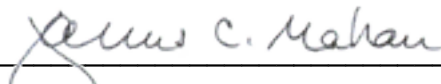
/s/ Ryan J. Lorenz

Ryan J. Lorenz (NV Bar No. 8165)
Nicholas M. Wieczorek (NV Bar No. 6170)
3800 Howard Hughes Pkwy. Ste. 500
Las Vegas, NV 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
*Attorneys for Defendants Adamas One
Corp., and John Grdina*

ORDER

Per the parties' stipulation, **IT IS SO ORDERED.**

1. On or before **Monday, May 15, 2023**, Plaintiff shall file an opposition to Defendants' motions to dismiss and/or inform the Court of how it wishes to proceed based on the facts set forth above concerning the requirements of Federal Rule of Procedure 23.1; and
2. On or before **Wednesday, June 21, 2023**, Defendants shall file their reply briefs to Plaintiff's oppositions to the motions to dismiss and/or file a response to Plaintiff's proposed course of how to proceed based on the facts set forth above concerning the requirements of Federal Rule of Civil Procedure 23.1.
3. All rights are reserved with regards to any further requests for extensions of deadlines. This schedule can be modified by further written agreement of the parties or order of the court.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.


UNITED STATES DISTRICT JUDGE

Date: April 7, 2023

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2023, a copy of the foregoing was served through the court's ECF/CM system to all counsel of record.

Dated: April 5, 2023

/s/ Martin A. Muckleroy
Martin A. Muckleroy